

NIH POLICY MANUAL

2300-590-1 - Title 38 Physician Special Pay

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A. Purpose: The following describes policies and procedures for the payment of Title 38 Physician Special Pay (PSP) to NIH physicians and dentists (hereinafter referred to collectively as "physicians"). This document supplements and must be used in conjunction with HHS Instruction 38-590-1, Title 38 Physician Special Pay which is available on the Web at <http://www.hhs.gov/progorg/ohr/manual/log.html> and the NIH Personnel Delegations of Authority

B. Coverage:

The following two categories of NIH physicians appointed in Title 5 are eligible for PSP:

1. Physicians who provide direct patient care or services incident to patient care. These physicians see patients on a regular basis (at least 10% of official time) as part of
 - . an active research protocol, i.e., one that is currently accruing patients and working toward a defined objective; or
 - b. the management of clinical research or service programs requiring clinical skills.
2. Physicians who oversee large interventional clinical trials, i.e., trials that have or anticipate having enrollment of 1,000 patients or more. These physicians
 - . are licensed or have obtained a waiver of licensure;
 - b. spend at least 10 percent of official time in direct involvement in the clinical trial;
 - c. are medically responsible for the clinical trial. Medical responsibility may be evidenced by a combination of some or all of the following:
 - determining the size of the trial
 - deciding eligibility or exclusion on individual patients, and admitting patients
 - monitoring progress reports
 - evaluating adverse events
 - directing changes in the trial, including its termination
 - formulating and interpreting medical policies
 - determining subsequent actions with respect to medicines/vaccines/future treatment protocols
 - exercising regulatory responsibility for the conduct of

the trial, etc.

Physicians whose primary role is to manage portfolios of grants, to perform basic research, or develop drugs and devices without being involved in direct patient care or the oversight of large interventional clinical trials are not eligible.

C. Eligibility: Physicians in the following positions (or equivalent for physicians identified in B. above) and grade levels may be considered:

Positions -

- IC Clinical Directors
- IC Clinical Branch Chiefs
- Clinical Center Department Heads
- Senior Investigators
- Staff Clinicians - use of Title 38 is permitted by exception to the Office of Intramural Research (OIR) mechanism of choice policy and requires the review and approval of an IC promotion or search committee as well as the Associate Director for Clinical Research (ADCR) and the Deputy Director for Intramural Research (DDIR).

Grade Levels -

- GS-602-15 positions (equivalent to Full Clinical Professor)
- GS-602-14 positions (equivalent to Associate Clinical Professor)
- GS-602-13 positions (equivalent to Assistant Clinical Professor)
- GS-602-14 positions (equivalent to Associate Clinical Professor)
- GS-602-13 positions (equivalent to Assistant Clinical Professor)
- GS-602-12 positions (equivalent to Clinical Instructor) - by exception only

D. Setting Pay: The payment of PSP is optional and should be used for recruitment and retention purposes to obtain comparability with the current labor market. For retention purposes, increases to total compensation above \$30,000 would be unjustified for employees converting to Title 38 absent: (1) a higher, written offer from a non-Federal employer, (2) a higher verbal job offer that has been confirmed by an Institute or Center official at a higher level than the employee or (3) non-Federal job opportunities substantiated by documentation that would lead a reasonable person to conclude that the individual would leave if the total compensation were not increased as proposed.

Total compensation consists of three parts:

- 1. Base Pay** - Title 5 special salary rate Table 0290, Medical Officer (Clinical) for physicians; the General Schedule Locality Rates for dentists. The grade within this salary schedule is based on the position classification. The step within the grade is based on consideration of appropriate factors warranting an appointment above-the-minimum.
- 2. Other Title 5 Discretionary Pay (see 5 CFR 530.202) - Frequently used examples are:**

- Recruitment Bonuses, Relocation Bonuses, and Retention Allowances (3Rs) - Physicians may receive a 3Rs under Title 5

- Incentive Awards and Performance Based Cash Awards

3. Title 38 PSP –

- **Non-discretionary Factors**

- Full-time Status Pay
- Length of Service Pay
- Board Certification Pay
- Geographic Location Pay - If established for a specific category of position or specialty. NIH authorizes \$17,000 for radiology.

- **Discretionary Factors** - Both the payment of and dollar amount within established ranges are discretionary

- Scarce Medical Specialty Pay
- Executive Responsibility Pay
- Exceptional Qualifications within a Specialty Pay

E. Compensation Limits:

- The sum of all Title 5 base pay plus other Title 5 discretionary pay, may not exceed the rate of pay for EX-I (currently \$157,000).
- The sum of Title 5 payments plus Title 38 PSP may not exceed the amount of annual pay received by the President. The President's pay is currently \$200,000 as defined in Title 3, Section 102.

F. Equity: ICs are responsible for determining the application of Title 38 coverage, for consistency in offering coverage to physicians occupying the same position description, and for recommending PSP amounts so that physicians with equivalent or similar training and accomplishments are treated equitably.

G. Setting Discretionary Pay: ICs shall exercise discretion in determining the dollar amount of each discretionary PSP within the approved ranges and shall recommend only the minimum amount necessary to recruit or retain physicians.

Scarce Medical Specialty Pay (SMS) - ICs may approve/recommend the payment of SMS for those specialties and within the ranges specified in the HHS Instruction or established by the NIH.

Executive Responsibility Pay (ERP) - This component is payable to physicians who provide services as Chief of Staff (IC Clinical Director or equivalent for MDs who oversee large interventional clinical trials) or Service Chiefs (Clinical Center Department Heads and IC Clinical Branch Chiefs or equivalent) .

Physicians receiving SMS and Executive Responsibility Pay must have both prorated to reflect the percent of time spent in each activity. The combined time in both activities cannot exceed 100%. Alternatively, when the physician uses his/her SMS as an Executive, 100% of the SMS and none of the ERP pay may be requested in lieu of pro-rating SMS and ERP.

Pay for Exceptional Qualifications within a Specialty - This category of PSP is available for physicians who possess exceptional qualifications within their specialty and is generally paid only to very senior physicians.

If ICs approve/recommend payment of Exceptional Qualifications within a Specialty, they are responsible for conducting a comparative review of PSP amounts of physicians within the IC who have the same length-of-service, specialty, and position, and for documenting this review in the request for payment of PSP.

H. Delegations of Authority: See Pay and Appointment Authorities on the OHRM web page at <http://www1.od.nih.gov/ohrm/hrinfo/Delegate/default.htm>. And,

The Deputy Director for Intramural Research (DDIR) - Serves as approving official for IC requests for waiver of repayment of PSP for failure to complete the service period.

I. Documentation:

New Requests:

- HHS-691¹. - Request for Special Pay for Physicians and Dentists (do not complete 3.b., SSN). The IC Director must sign as recommending official if approval of the Director, NIH is required.
- HHS-691-1¹ - Employee Agreement to Receive Special Pay for Physicians and Dentists Under Title 38 (do not complete item B. SSN).
- NIH Request for Payment of Title 38 Physician Special Pay (Appendix 1) or a memorandum addressing each of the factors in the Appendix. NOTE: Requests for Staff Clinicians must be signed/initialed by the IC Clinical and Scientific Directors.
- Current Curriculum Vitae
- Classified Position Description (signed OF-8 and narrative description of duties and responsibilities must be forwarded if seeking approval by the Director, NIH)
- As appropriate - description of the MD's actual/probable non-Federal employment opportunities and/or a copy of current/proposed 3Rs

Renewals Approved Within the IC:

- If the previously submitted narrative request remains accurate, a memorandum addressing accomplishments since PSP was last requested.
- HHS-691
- HHS-691-1

Subsequent Requests Requiring Approval by the Director, NIH:

- If the previously submitted narrative request remains accurate, it may be updated by memorandum addressing the conditions stated in the previous approval as well as the MD's accomplishments since PSP was last requested. Submit updating memorandum with a copy of the previously approved request.
 - HHS-691
 - HHS-691-1

J. Procedures : Requests for NIH credentialing and requests involving a major change in the duties of a physician who is currently credentialed should be submitted separate from the salary request to the Executive Secretary for the Medical Executive Committee, Building 10, Room 2C146. Separate credentialing and salary requests may be submitted concurrently.

Requests for total compensation requiring review and approval by the Director, NIH should be submitted to the Senior and Scientific Employment Division (SASED), OHRM, in Building 31, Room B3C07. The Clinical Salary Review Board² reviews all requests requiring the review/approval of the Director, NIH. The review is conducted on an ad hoc basis and member's comments are collected electronically. Requests requiring additional discussion are reviewed at the standing CSRB meeting, the first workday Monday of each month.

Completed cases will be returned to the IC by OHRM/SASED following the response of the approving official.

Appendix 2 provides a flow chart capturing the steps in the review process; Appendix 3 provides a timeline reflecting the typical number of workdays required to obtain review and approval by the Director, NIH.

All cases approved within the IC will be post-audited by SASED. IC's are responsible for forwarding a complete copy of all IC approved cases to SASED within ten workdays.

K. Annuity Calculations: This section revises information contained in HHS Instruction 38-590-1-80B., dated 7/20/98 which states that for physicians with service preceding the authorization of PSP, the 8 year phase-in of the use of PSP in the calculation of annuity begins on the date of the physician's initial PSP contract or the date HHS received the authority to begin paying PSP, whichever is later.

Subsequent to issuance of the HHS Instruction, the U.S. Office of Personnel Management issued a written communication indicating that all service as a physician or dentist in the following organizations on or after the dates indicated is creditable for meeting the phase in requirement:

- Veterans Health Administration (or its predecessor) as of July 14, 1991
- Department of Justice as of February 3, 1994
- Department of Health and Human Services as of December 14, 1993
- Department of Defense as of December 20, 1993

This includes service as a resident or intern, in a direct patient care capacity while on a full-time work schedule, part-time work schedule (regardless of the scheduled hours), actual days or hours worked on an intermittent basis and up to 6 months leave without pay in a calendar year.

Therefore, for NIH physicians having creditable service *prior to* their initial receipt of PSP, the effective date to be used in determining the 8 year phase-in of PSP for retirement calculation purposes is generally December 14, 1993 or the date of hire at NIH, whichever is later. In most cases, the phase-in will no longer be applicable after December 14, 2001. Thereafter, only the 15 year requirement will apply, i.e., a physician who enters into a PSP

agreement must complete 15 years of retirement creditable service in order to have PSP included as basic pay in determining the

civil service annuity. For types of retirement creditable service, go to the HHS Web site at <http://www.hhs.gov/progorg/ohr/manual/log.html>. Then open Instruction 38-590-1 by clicking on transmittal number 98.4. (To use the ".PDF" version, you must have [Adobe Acrobat Reader](#).)

L. Management Controls: The purpose of this manual issuance is to provide policies and procedures for the payment of Title 38 Physician Special Pay, and to ensure that PSP is conducted in full accordance with statutory, regulatory, and policy requirements.

1. The Office responsible for reviewing management controls relative to this Chapter is the Office of Human Resource Management (OHRM), Office of the Director, NIH. Through this issuance, the OHRM is accountable for the method used to ensure that management controls are implemented and working.
2. Frequency of Review: The OHRM pre-audits all PSP requests requiring the approval of the Director, NIH. OHRM will post audit all requests approved by the IC. Post audits will be reported as requested by the Deputy Director for Management.
3. Method of Review: OHRM will review approved PSP requests.
4. Review reports are sent to the Deputy Director for Management, NIH.

M. Records Retention and Disposal: All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of [NIH Manual 1743](#), "Keeping and Destroying Records, Appendix 1, NIH Records Control Schedule" Item 1100-M-1.

NIH e-mail messages (messages, including attachments that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. If necessary, back up file capability should be created for this purpose. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of the Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

¹ HHS forms are available on the WEB at <http://forms.psc.gov/forms/HHS/hhs.html>

² Chair - Deputy Director for Intramural Research; Members - the Associate Director for Clinical Research (ADCR), the Chair of the Medical Executive Committee (MEC), additional representatives of the ICs & IC Clinical Directors, the Deputy Director for Management, and the Director, Office of Human Resources.

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